

AMENDED IN ASSEMBLY AUGUST 15, 2016

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE APRIL 20, 2015

AMENDED IN SENATE MARCH 26, 2015

AMENDED IN SENATE MARCH 12, 2015

**SENATE BILL**

**No. 122**

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**Introduced by Senators Jackson and Hill  
(Coauthor: Senator Hertzberg)**

January 15, 2015

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An act to amend Sections 21082.1, 21091, 21159.9, and 21167.6 of, and to add Section 21167.6.2 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Jackson. California Environmental Quality Act: record of proceedings.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure for the preparation and

certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would require the lead agency, at the request of a project applicant and consent of the lead agency, to prepare a record of proceedings concurrently with the preparation of a negative declaration, mitigated negative declaration, EIR, or other environmental document for projects.

(2) CEQA requires the lead agency to submit to the State Clearinghouse a sufficient number of copies of specified environmental documents prepared pursuant to CEQA for review and comment by state agencies in certain circumstances and a copy of those documents in electronic form, as prescribed. CEQA requires the Office of Planning and Research to implement, utilizing existing resources, a public assistance program to, among other things, establish and maintain a database to assist in the preparation of environmental documents, establish and maintain a central repository for the collection, storage, retrieval, and dissemination of certain notices provided to the office, and provide to the California State Library copies of documents submitted in electronic format to the office pursuant to CEQA.

This bill would require a lead agency to submit to the State Clearinghouse those environmental documents in either a hard-copy or electronic form as prescribed by the office. The bill would instead require the office to establish and maintain a database for the collection, storage, retrieval, and dissemination of environmental documents and notices prepared pursuant to CEQA and to make the database available online to the public. The bill would eliminate the requirement to provide copies of documents to the California State Library. The bill would require the office to submit to the Legislature a report, by July 1, ~~2016~~, 2017, describing the implementation of this requirement and a status report, by July 1, ~~2018~~, 2019.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 21082.1 of the Public Resources Code
- 2 is amended to read:
- 3 21082.1. (a) A draft environmental impact report,
- 4 environmental impact report, negative declaration, or mitigated

1 negative declaration prepared pursuant to the requirements of this  
2 division shall be prepared directly by, or under contract to, a public  
3 agency.

4 (b) This section does not prohibit, and shall not be construed as  
5 prohibiting, a person from submitting information or other  
6 comments to the public agency responsible for preparing an  
7 environmental impact report, draft environmental impact report,  
8 negative declaration, or mitigated negative declaration. The  
9 information or other comments may be submitted in any format,  
10 shall be considered by the public agency, and may be included, in  
11 whole or in part, in any report or declaration.

12 (c) The lead agency shall do all of the following:

13 (1) Independently review and analyze any report or declaration  
14 required by this division.

15 (2) Circulate draft documents that reflect its independent  
16 judgment.

17 (3) As part of the adoption of a negative declaration or a  
18 mitigated negative declaration, or certification of an environmental  
19 impact report, find that the report or declaration reflects the  
20 independent judgment of the lead agency.

21 (4) Submit a sufficient number of copies, in either a hard-copy  
22 or electronic form as required by the Office of Planning and  
23 Research, of the draft environmental impact report, proposed  
24 negative declaration, or proposed mitigated negative declaration  
25 to the State Clearinghouse for review and comment by state  
26 agencies, if any of the following apply:

27 (A) A state agency is any of the following:

- 28 (i) The lead agency.
- 29 (ii) A responsible agency.
- 30 (iii) A trustee agency.

31 (B) A state agency otherwise has jurisdiction by law with respect  
32 to the project.

33 (C) The proposed project is of sufficient statewide, regional, or  
34 areawide environmental significance as determined pursuant to  
35 the guidelines certified and adopted pursuant to Section 21083.

36 SEC. 2. Section 21091 of the Public Resources Code is  
37 amended to read:

38 21091. (a) The public review period for a draft environmental  
39 impact report shall not be less than 30 days. If the draft  
40 environmental impact report is submitted to the State Clearinghouse

1 for review, the review period shall be at least 45 days, and the lead  
2 agency shall provide a sufficient number of copies of the document,  
3 in either a hard-copy or electronic form as required by the Office  
4 of Planning and Research, to the State Clearinghouse for review  
5 and comment by state agencies.

6 (b) The public review period for a proposed negative declaration  
7 or proposed mitigated negative declaration shall not be less than  
8 20 days. If the proposed negative declaration or proposed mitigated  
9 negative declaration is submitted to the State Clearinghouse for  
10 review, the review period shall be at least 30 days, and the lead  
11 agency shall provide a sufficient number of copies of the document,  
12 in either a hard-copy or electronic form as required by the Office  
13 of Planning and Research, to the State Clearinghouse for review  
14 and comment by state agencies.

15 (c) (1) Notwithstanding subdivisions (a) and (b), if a draft  
16 environmental impact report, proposed negative declaration, or  
17 proposed mitigated negative declaration is submitted to the State  
18 Clearinghouse for review and the period of review by the State  
19 Clearinghouse is longer than the public review period established  
20 pursuant to subdivision (a) or (b), whichever is applicable, the  
21 public review period shall be at least as long as the period of review  
22 and comment by state agencies as established by the State  
23 Clearinghouse.

24 (2) The public review period and the state agency review period  
25 may, but are not required to, begin and end at the same time. Day  
26 one of the state agency review period shall be the date that the  
27 State Clearinghouse distributes the CEQA document to state  
28 agencies.

29 (3) If the submittal of a CEQA document is determined by the  
30 State Clearinghouse to be complete, the State Clearinghouse shall  
31 distribute the document within three working days from the date  
32 of receipt. The State Clearinghouse shall specify the information  
33 that will be required in order to determine the completeness of the  
34 submittal of a CEQA document.

35 (d) (1) The lead agency shall consider comments it receives on  
36 a draft environmental impact report, proposed negative declaration,  
37 or proposed mitigated negative declaration if those comments are  
38 received within the public review period.

39 (2) (A) With respect to the consideration of comments received  
40 on a draft environmental impact report, the lead agency shall

1 evaluate comments on environmental issues that are received from  
2 persons who have reviewed the draft and shall prepare a written  
3 response pursuant to subparagraph (B). The lead agency may also  
4 respond to comments that are received after the close of the public  
5 review period.

6 (B) The written response shall describe the disposition of each  
7 significant environmental issue that is raised by commenters. The  
8 responses shall be prepared consistent with Section 15088 of Title  
9 14 of the California Code of Regulations.

10 (3) (A) With respect to the consideration of comments received  
11 on a draft environmental impact report, proposed negative  
12 declaration, proposed mitigated negative declaration, or notice  
13 pursuant to Section 21080.4, the lead agency shall accept comments  
14 via electronic mail and shall treat electronic-mail comments as  
15 equivalent to written comments.

16 (B) Any law or regulation relating to written comments received  
17 on a draft environmental impact report, proposed negative  
18 declaration, proposed mitigated negative declaration, or notice  
19 received pursuant to Section 21080.4 shall also apply to  
20 electronic-mail comments received for those reasons.

21 (e) (1) Criteria for shorter review periods by the State  
22 Clearinghouse for documents that must be submitted to the State  
23 Clearinghouse shall be set forth in the written guidelines issued  
24 by the Office of Planning and Research and made available to the  
25 public.

26 (2) Those shortened review periods may not be less than 30  
27 days for a draft environmental impact report and 20 days for a  
28 negative declaration.

29 (3) A request for a shortened review period shall only be made  
30 in writing by the decisionmaking body of the lead agency to the  
31 Office of Planning and Research. The decisionmaking body may  
32 designate by resolution or ordinance a person authorized to request  
33 a shortened review period. A designated person shall notify the  
34 decisionmaking body of this request.

35 (4) A request approved by the State Clearinghouse shall be  
36 consistent with the criteria set forth in the written guidelines of  
37 the Office of Planning and Research.

38 (5) A shortened review period may not be approved by the  
39 Office of Planning and Research for a proposed project of

1 statewide, regional, or areawide environmental significance as  
2 determined pursuant to Section 21083.

3 (6) An approval of a shortened review period shall be given  
4 prior to, and reflected in, the public notice required pursuant to  
5 Section 21092.

6 (f) Prior to carrying out or approving a project for which a  
7 negative declaration has been adopted, the lead agency shall  
8 consider the negative declaration together with comments that  
9 were received and considered pursuant to paragraph (1) of  
10 subdivision (d).

11 SEC. 3. Section 21159.9 of the Public Resources Code is  
12 amended to read:

13 21159.9. The Office of Planning and Research shall implement  
14 a public assistance and information program to ensure efficient  
15 and effective implementation of this division and to do both of the  
16 following:

17 (a) Establish a public education and training program for  
18 planners, developers, and other interested parties to assist them in  
19 implementing this division.

20 (b) (1) Establish and maintain a database for the collection,  
21 storage, retrieval, and dissemination of environmental documents,  
22 notices of exemption, notices of preparation, notices of  
23 determination, and notices of completion provided to the Office  
24 of Planning and Research. The database shall be available online  
25 to the public through the Internet. The Office of Planning and  
26 Research may coordinate with another state agency to host and  
27 maintain the online database.

28 (2) The Office of Planning and Research may phase in the  
29 submission of electronic documents and use of the database by  
30 state and local public agencies.

31 (3) (A) Pursuant to Section 9795 of the Government Code, the  
32 Office of Planning and Research shall, no later than July 1, ~~2016;~~  
33 ~~2017~~, submit to the Legislature a report describing how it plans to  
34 implement this subdivision, and shall provide an additional report  
35 to the Legislature no later than July 1, ~~2018;~~ ~~2019~~, describing the  
36 status of the implementation of this subdivision.

37 (B) Pursuant to Section 10231.5 of the Government Code, this  
38 paragraph is inoperative on July 1, ~~2022;~~ ~~2023~~.

39 SEC. 4. Section 21167.6 of the Public Resources Code is  
40 amended to read:

1     21167.6. Notwithstanding any other law, in all actions or  
2     proceedings brought pursuant to Section 21167, except as provided  
3     in Section 21167.6.2 or those involving the Public Utilities  
4     Commission, all of the following shall apply:

5     (a) At the time that the action or proceeding is filed, the plaintiff  
6     or petitioner shall file a request that the respondent public agency  
7     prepare the record of proceedings relating to the subject of the  
8     action or proceeding. The request, together with the complaint or  
9     petition, shall be served personally upon the public agency not  
10    later than 10 business days from the date that the action or  
11    proceeding was filed.

12    (b) (1) The public agency shall prepare and certify the record  
13    of proceedings not later than 60 days from the date that the request  
14    specified in subdivision (a) was served upon the public agency.  
15    Upon certification, the public agency shall lodge a copy of the  
16    record of proceedings with the court and shall serve on the parties  
17    notice that the record of proceedings has been certified and lodged  
18    with the court. The parties shall pay any reasonable costs or fees  
19    imposed for the preparation of the record of proceedings in  
20    conformance with any law or rule of court.

21    (2) The plaintiff or petitioner may elect to prepare the record  
22    of proceedings or the parties may agree to an alternative method  
23    of preparation of the record of proceedings, subject to certification  
24    of its accuracy by the public agency, within the time limit specified  
25    in this subdivision.

26    (c) The time limit established by subdivision (b) may be  
27    extended only upon the stipulation of all parties who have been  
28    properly served in the action or proceeding or upon order of the  
29    court. Extensions shall be liberally granted by the court when the  
30    size of the record of proceedings renders infeasible compliance  
31    with that time limit. There is no limit on the number of extensions  
32    that may be granted by the court, but no single extension shall  
33    exceed 60 days unless the court determines that a longer extension  
34    is in the public interest.

35    (d) If the public agency fails to prepare and certify the record  
36    within the time limit established in paragraph (1) of subdivision  
37    (b), or any continuances of that time limit, the plaintiff or petitioner  
38    may move for sanctions, and the court may, upon that motion,  
39    grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of



1 any environmental document, or portions thereof, that have been  
2 released for public review, and copies of studies or other documents  
3 relied upon in any environmental document prepared for the project  
4 and either made available to the public during the public review  
5 period or included in the respondent public agency's files on the  
6 project, and all internal agency communications, including staff  
7 notes and memoranda related to the project or to compliance with  
8 this division.

9 (11) The full written record before any inferior administrative  
10 decisionmaking body whose decision was appealed to a superior  
11 administrative decisionmaking body prior to the filing of litigation.

12 (f) In preparing the record of proceedings, the party preparing  
13 the record shall strive to do so at reasonable cost in light of the  
14 scope of the record.

15 (g) The clerk of the superior court shall prepare and certify the  
16 clerk's transcript on appeal not later than 60 days from the date  
17 that the notice designating the papers or records to be included in  
18 the clerk's transcript was filed with the superior court, if the party  
19 or parties pay any costs or fees for the preparation of the clerk's  
20 transcript imposed in conformance with any law or rules of court.  
21 Nothing in this subdivision precludes an election to proceed by  
22 appendix, as provided in Rule 8.124 of the California Rules of  
23 Court.

24 (h) Extensions of the period for the filing of any brief on appeal  
25 may be allowed only by stipulation of the parties or by order of  
26 the court for good cause shown. Extensions for the filing of a brief  
27 on appeal shall be limited to one 30-day extension for the  
28 preparation of an opening brief and one 30-day extension for the  
29 preparation of a responding brief, except that the court may grant  
30 a longer extension or additional extensions if it determines that  
31 there is a substantial likelihood of settlement that would avoid the  
32 necessity of completing the appeal.

33 (i) At the completion of the filing of briefs on appeal, the  
34 appellant shall notify the court of the completion of the filing of  
35 briefs, whereupon the clerk of the reviewing court shall set the  
36 appeal for hearing on the first available calendar date.

37 SEC. 5. Section 21167.6.2 is added to the Public Resources  
38 Code, to read:

39 21167.6.2. (a) (1) Notwithstanding Section 21167.6, upon  
40 the written request of a project applicant received no later than 30

1 days after the date that the lead agency makes a determination  
2 pursuant to subdivision (a) of Section 21080.1, Section 21094.5,  
3 or Chapter 4.2 (commencing with Section 21155) and with the  
4 consent of the lead agency as provided in subdivision (e), the lead  
5 agency shall prepare and certify the record of proceedings in the  
6 following manner:

7 (A) The lead agency for the project shall prepare the record of  
8 proceedings pursuant to this division concurrently with the  
9 administrative process.

10 (B) All documents and other materials placed in the record of  
11 proceedings shall be posted on, and be downloadable from, an  
12 Internet Web site maintained by the lead agency commencing with  
13 the date of the release of the draft environmental document for the  
14 project. If the lead agency cannot maintain an Internet Web site  
15 with the information required pursuant to this section, the lead  
16 agency shall provide a link on the agency's Internet Web site to  
17 that information.

18 (C) The lead agency shall make available to the public in a  
19 readily accessible electronic format the draft environmental  
20 document for the project, and all other documents submitted to,  
21 cited by, or relied on by the lead agency, in the preparation of the  
22 draft environmental document for the project.

23 (D) A document prepared by the lead agency or submitted by  
24 the applicant after the date of the release of the draft environmental  
25 document for the project that is a part of the record of the  
26 proceedings shall be made available to the public in a readily  
27 accessible electronic format within 5 business days after the  
28 document is released or received by the lead agency.

29 (E) The lead agency shall encourage written comments on the  
30 project to be submitted in a readily accessible electronic format,  
31 and shall make any comment available to the public in a readily  
32 accessible electronic format within 5 business days of its receipt.

33 (F) Within 7 business days after the receipt of any comment  
34 that is not in an electronic format, the lead agency shall convert  
35 that comment into a readily accessible electronic format and make  
36 it available to the public in that format.

37 (G) The lead agency shall certify the record of proceedings  
38 within 30 days after the filing of the notice required pursuant to  
39 Section 21108 or 21152.

1 (2) This subdivision does not require the disclosure or posting  
2 of any trade secret as defined in Section 6254.7 of the Government  
3 Code, information about the location of archaeological sites or  
4 sacred lands, or any other information that is subject to the  
5 disclosure restrictions of Section 6254 of the Government Code.

6 (b) Any dispute regarding the record of proceedings prepared  
7 pursuant to this section shall be resolved by the court in an action  
8 or proceeding brought pursuant to subdivision (b) or (c) of Section  
9 21167.

10 (c) The content of the record of proceedings shall be as specified  
11 in subdivision (e) of Section 21167.6.

12 (d) The negative declaration, mitigated negative declaration,  
13 draft and final environmental impact report, or other environmental  
14 document shall include a notice in no less than 12-point type stating  
15 the following:

16  
17 “THIS DOCUMENT IS SUBJECT TO SECTION 21167.6.2  
18 OF THE PUBLIC RESOURCES CODE, WHICH REQUIRES  
19 THE RECORD OF PROCEEDINGS FOR THIS PROJECT TO  
20 BE PREPARED CONCURRENTLY WITH THE  
21 ADMINISTRATIVE PROCESS; DOCUMENTS PREPARED  
22 BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE  
23 POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE;  
24 AND THE LEAD AGENCY TO ENCOURAGE WRITTEN  
25 COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE  
26 LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC  
27 FORMAT.”

28  
29 (e) (1) The lead agency shall respond to a request by the project  
30 applicant within 10 business days from the date that the request  
31 pursuant to subdivision (a) is received by the lead agency.

32 (2) A project applicant and the lead agency may mutually agree,  
33 in writing, to extend the time period for the lead agency to respond  
34 pursuant to paragraph (1), but they shall not extend that period  
35 beyond the commencement of the public review period for the  
36 proposed negative declaration, mitigated negative declaration,  
37 draft environmental impact report, or other environmental  
38 document.

39 (3) The request to prepare a record of proceedings pursuant to  
40 this section shall be deemed denied if the lead agency fails to

1 respond within 10 business days of receiving the request or within  
2 the time period agreed upon pursuant to paragraph (2), whichever  
3 ends later.

4 (f) The written request of the applicant submitted pursuant to  
5 subdivision (a) shall include an agreement to pay all of the lead  
6 agency's costs of preparing and certifying the record of proceedings  
7 pursuant to this section and complying with the requirements of  
8 this section, in a manner specified by the lead agency.

9 (g) The costs of preparing the record of proceedings pursuant  
10 to this section and complying with the requirements of this section  
11 are not recoverable costs pursuant to Section 1032 of the Code of  
12 Civil Procedure.

13 (h) Pursuant to subdivision (f) and Section 21089, the lead  
14 agency may charge and collect a reasonable fee from the person  
15 making the request pursuant to subdivision (a) to recover the costs  
16 incurred by the lead agency in preparing the record of proceedings  
17 pursuant to this section.